

SECOND REGULAR SESSION

# SENATE BILL NO. 1025

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Read 1st time March 1, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

5236S.011

## AN ACT

To repeal section 208.010, RSMo, and to enact in lieu thereof one new section relating to trusts to pay for funeral services, facilities, or merchandise.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 208.010, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 208.010, to read as follows:

208.010. 1. In determining the eligibility of a claimant for public  
2 assistance pursuant to this law, it shall be the duty of the division of family  
3 services to consider and take into account all facts and circumstances  
4 surrounding the claimant, including his or her living conditions, earning capacity,  
5 income and resources, from whatever source received, and if from all the facts and  
6 circumstances the claimant is not found to be in need, assistance shall be denied.  
7 In determining the need of a claimant, the costs of providing medical treatment  
8 which may be furnished pursuant to sections 208.151 to 208.158 and 208.162  
9 shall be disregarded. The amount of benefits, when added to all other income,  
10 resources, support, and maintenance shall provide such persons with reasonable  
11 subsistence compatible with decency and health in accordance with the standards  
12 developed by the division of family services; provided, when a husband and wife  
13 are living together, the combined income and resources of both shall be  
14 considered in determining the eligibility of either or both. "Living together" for  
15 the purpose of this chapter is defined as including a husband and wife separated  
16 for the purpose of obtaining medical care or nursing home care, except that the  
17 income of a husband or wife separated for such purpose shall be considered in  
18 determining the eligibility of his or her spouse, only to the extent that such  
19 income exceeds the amount necessary to meet the needs (as defined by rule or

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

20 regulation of the division) of such husband or wife living separately. In  
21 determining the need of a claimant in federally aided programs there shall be  
22 disregarded such amounts per month of earned income in making such  
23 determination as shall be required for federal participation by the provisions of  
24 the federal Social Security Act (42 U.S.C.A. 301 et seq.), or any amendments  
25 thereto. When federal law or regulations require the exemption of other income  
26 or resources, the division of family services may provide by rule or regulation the  
27 amount of income or resources to be disregarded.

28 2. Benefits shall not be payable to any claimant who:

29 (1) Has or whose spouse with whom he or she is living has, prior to July  
30 1, 1989, given away or sold a resource within the time and in the manner  
31 specified in this subdivision. In determining the resources of an individual,  
32 unless prohibited by federal statutes or regulations, there shall be included (but  
33 subject to the exclusions pursuant to subdivisions (4) and (5) of this subsection,  
34 and subsection [5] 6 of this section) any resource or interest therein owned by  
35 such individual or spouse within the twenty-four months preceding the initial  
36 investigation, or at any time during which benefits are being drawn, if such  
37 individual or spouse gave away or sold such resource or interest within such  
38 period of time at less than fair market value of such resource or interest for the  
39 purpose of establishing eligibility for benefits, including but not limited to  
40 benefits based on December, 1973, eligibility requirements, as follows:

41 (a) Any transaction described in this subdivision shall be presumed to  
42 have been for the purpose of establishing eligibility for benefits or assistance  
43 pursuant to this chapter unless such individual furnishes convincing evidence to  
44 establish that the transaction was exclusively for some other purpose;

45 (b) The resource shall be considered in determining eligibility from the  
46 date of the transfer for the number of months the uncompensated value of the  
47 disposed of resource is divisible by the average monthly grant paid or average  
48 Medicaid payment in the state at the time of the investigation to an individual  
49 or on his or her behalf under the program for which benefits are claimed,  
50 provided that:

51 a. When the uncompensated value is twelve thousand dollars or less, the  
52 resource shall not be used in determining eligibility for more than twenty-four  
53 months; or

54 b. When the uncompensated value exceeds twelve thousand dollars, the  
55 resource shall not be used in determining eligibility for more than sixty months;

56 (2) The provisions of subdivision (1) of this subsection shall not apply to  
57 a transfer, other than a transfer to claimant's spouse, made prior to March 26,  
58 1981, when the claimant furnishes convincing evidence that the uncompensated  
59 value of the disposed of resource or any part thereof is no longer possessed or  
60 owned by the person to whom the resource was transferred;

61 (3) Has received, or whose spouse with whom he or she is living has  
62 received, benefits to which he or she was not entitled through misrepresentation  
63 or nondisclosure of material facts or failure to report any change in status or  
64 correct information with respect to property or income as required by section  
65 208.210. A claimant ineligible pursuant to this subsection shall be ineligible for  
66 such period of time from the date of discovery as the division of family services  
67 may deem proper; or in the case of overpayment of benefits, future benefits may  
68 be decreased, suspended or entirely withdrawn for such period of time as the  
69 division may deem proper;

70 (4) Owns or possesses resources in the sum of one thousand dollars or  
71 more; provided, however, that if such person is married and living with spouse,  
72 he or she, or they, individually or jointly, may own resources not to exceed two  
73 thousand dollars; and provided further, that in the case of a temporary assistance  
74 for needy families claimant, the provision of this subsection shall not apply;

75 (5) Prior to October 1, 1989, owns or possesses property of any kind or  
76 character, excluding amounts placed in an irrevocable prearranged funeral or  
77 burial contract pursuant to subsection 2 of section 436.035, RSMo, and  
78 subdivision (5) of subsection 1 of section 436.053, RSMo, or has an interest in  
79 property, of which he or she is the record or beneficial owner, the value of such  
80 property, as determined by the division of family services, less encumbrances of  
81 record, exceeds twenty-nine thousand dollars, or if married and actually living  
82 together with husband or wife, if the value of his or her property, or the value of  
83 his or her interest in property, together with that of such husband and wife,  
84 exceeds such amount;

85 (6) In the case of temporary assistance for needy families, if the parent,  
86 stepparent, and child or children in the home owns or possesses property of any  
87 kind or character, or has an interest in property for which he or she is a record  
88 or beneficial owner, the value of such property, as determined by the division of  
89 family services and as allowed by federal law or regulation, less encumbrances  
90 of record, exceeds one thousand dollars, excluding the home occupied by the  
91 claimant, amounts placed in an irrevocable prearranged funeral or burial contract

92 pursuant to subsection 2 of section 436.035, RSMo, and subdivision (5) of  
93 subsection 1 of section 436.053, RSMo, one automobile which shall not exceed a  
94 value set forth by federal law or regulation and for a period not to exceed six  
95 months, such other real property which the family is making a good-faith effort  
96 to sell, if the family agrees in writing with the division of family services to sell  
97 such property and from the net proceeds of the sale repay the amount of  
98 assistance received during such period. If the property has not been sold within  
99 six months, or if eligibility terminates for any other reason, the entire amount of  
100 assistance paid during such period shall be a debt due the state;

101 (7) Is an inmate of a public institution, except as a patient in a public  
102 medical institution.

103 3. In determining eligibility and the amount of benefits to be granted  
104 pursuant to federally aided programs, the income and resources of a relative or  
105 other person living in the home shall be taken into account to the extent the  
106 income, resources, support and maintenance are allowed by federal law or  
107 regulation to be considered.

108 4. In determining eligibility and the amount of benefits to be granted  
109 pursuant to federally aided programs, the value of burial lots or any amounts  
110 placed in an irrevocable prearranged funeral or burial contract pursuant to  
111 [subsection 2 of section 436.035, RSMo, and subdivision (5) of subsection 1 of  
112 section 436.053, RSMo,] **chapter 436** shall not be taken into account or  
113 considered an asset of the burial lot owner or the beneficiary of an irrevocable  
114 prearranged funeral or funeral contract. For purposes of this section, "burial lots"  
115 means any burial space as defined in section 214.270, RSMo, and any memorial,  
116 monument, marker, tombstone or letter marking a burial space. If the  
117 beneficiary, as defined in chapter 436, RSMo, of an irrevocable prearranged  
118 funeral or burial contract receives any public assistance benefits pursuant to this  
119 chapter and if the purchaser of such contract or his or her successors in interest  
120 cancel or amend the contract so that any person will be entitled to a refund, such  
121 refund shall be paid to the state of Missouri up to the amount of public assistance  
122 benefits provided pursuant to this chapter with any remainder to be paid to those  
123 persons designated in chapter 436, RSMo.

124 5. **In determining eligibility and the amount of benefits to be**  
125 **granted pursuant to federally aided programs, any amounts up to nine**  
126 **thousand nine hundred ninety-nine dollars placed in an irrevocable**  
127 **trust designated to pay for, at the time of need, the final disposition of**

128 **a dead human body, funeral or burial services or facilities, or funeral**  
129 **merchandise that is not a preneed funeral contract as defined in**  
130 **section 436.405, shall not be considered an asset of the beneficiary. Any**  
131 **overages after final disposition shall be paid to the state of Missouri up**  
132 **to the amount of public assistance benefits provided to the beneficiary**  
133 **pursuant to this chapter with any remainder to be paid to those**  
134 **designated in the trust.**

135 **6.** In determining the total property owned pursuant to subdivision (5) of  
136 subsection 2 of this section, or resources, of any person claiming or for whom  
137 public assistance is claimed, there shall be disregarded any life insurance policy,  
138 or prearranged funeral or burial contract, or any two or more policies or  
139 contracts, or any combination of policies and contracts, which provides for the  
140 payment of one thousand five hundred dollars or less upon the death of any of the  
141 following:

142 (1) A claimant or person for whom benefits are claimed; or

143 (2) The spouse of a claimant or person for whom benefits are claimed with  
144 whom he or she is living. If the value of such policies exceeds one thousand five  
145 hundred dollars, then the total value of such policies may be considered in  
146 determining resources; except that, in the case of temporary assistance for needy  
147 families, there shall be disregarded any prearranged funeral or burial contract,  
148 or any two or more contracts, which provides for the payment of one thousand five  
149 hundred dollars or less per family member.

150 **[6.] 7.** Beginning September 30, 1989, when determining the eligibility  
151 of institutionalized spouses, as defined in 42 U.S.C. Section 1396r-5, for medical  
152 assistance benefits as provided for in section 208.151 and 42 U.S.C. Sections  
153 1396a et seq., the division of family services shall comply with the provisions of  
154 the federal statutes and regulations. As necessary, the division shall by rule or  
155 regulation implement the federal law and regulations which shall include but not  
156 be limited to the establishment of income and resource standards and  
157 limitations. The division shall require:

158 (1) That at the beginning of a period of continuous institutionalization  
159 that is expected to last for thirty days or more, the institutionalized spouse, or  
160 the community spouse, may request an assessment by the division of family  
161 services of total countable resources owned by either or both spouses;

162 (2) That the assessed resources of the institutionalized spouse and the  
163 community spouse may be allocated so that each receives an equal share;

164 (3) That upon an initial eligibility determination, if the community  
165 spouse's share does not equal at least twelve thousand dollars, the  
166 institutionalized spouse may transfer to the community spouse a resource  
167 allowance to increase the community spouse's share to twelve thousand dollars;

168 (4) That in the determination of initial eligibility of the institutionalized  
169 spouse, no resources attributed to the community spouse shall be used in  
170 determining the eligibility of the institutionalized spouse, except to the extent  
171 that the resources attributed to the community spouse do exceed the community  
172 spouse's resource allowance as defined in 42 U.S.C. Section 1396r-5;

173 (5) That beginning in January, 1990, the amount specified in subdivision  
174 (3) of this subsection shall be increased by the percentage increase in the  
175 Consumer Price Index for All Urban Consumers between September, 1988, and  
176 the September before the calendar year involved; and

177 (6) That beginning the month after initial eligibility for the  
178 institutionalized spouse is determined, the resources of the community spouse  
179 shall not be considered available to the institutionalized spouse during that  
180 continuous period of institutionalization.

181 [7.] 8. Beginning July 1, 1989, institutionalized individuals shall be  
182 ineligible for the periods required and for the reasons specified in 42 U.S.C.  
183 Section 1396p.

184 [8.] 9. The hearings required by 42 U.S.C. Section 1396r-5 shall be  
185 conducted pursuant to the provisions of section 208.080.

186 [9.] 10. Beginning October 1, 1989, when determining eligibility for  
187 assistance pursuant to this chapter there shall be disregarded unless otherwise  
188 provided by federal or state statutes, the home of the applicant or recipient when  
189 the home is providing shelter to the applicant or recipient, or his or her spouse  
190 or dependent child. The division of family services shall establish by rule or  
191 regulation in conformance with applicable federal statutes and regulations a  
192 definition of the home and when the home shall be considered a resource that  
193 shall be considered in determining eligibility.

194 [10.] 11. Reimbursement for services provided by an enrolled Medicaid  
195 provider to a recipient who is duly entitled to Title XIX Medicaid and Title XVIII  
196 Medicare Part B, Supplementary Medical Insurance (SMI) shall include payment  
197 in full of deductible and coinsurance amounts as determined due pursuant to the  
198 applicable provisions of federal regulations pertaining to Title XVIII Medicare  
199 Part B, except the applicable Title XIX cost sharing.

200 [11.] 12. A "community spouse" is defined as being the  
201 noninstitutionalized spouse.

202 [12.] 13. An institutionalized spouse applying for Medicaid and having  
203 a spouse living in the community shall be required, to the maximum extent  
204 permitted by law, to divert income to such community spouse to raise the  
205 community spouse's income to the level of the minimum monthly needs allowance,  
206 as described in 42 U.S.C. Section 1396r-5. Such diversion of income shall occur  
207 before the community spouse is allowed to retain assets in excess of the  
208 community spouse protected amount described in 42 U.S.C. Section 1396r-5.

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Bill

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